



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

William H. Roberts, Esq.
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One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103-6998

MAY 28 2009

RE: MUR 6089

Dear Mr. Roberts:

On October 14, 2008, the Federal Election Commission notified your client, Meakem Communications Company LLC of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On May 19, 2009, the Commission found, on the basis of the information in the complaint, and information provided in your response, that there is no reason to believe Meakem Communications Company LLC (a/k/a Leadership Radio Network) violated the Act or Commission regulations in connection with the allegations in this matter. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg".

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

**RESPONDENT: Meakem Communications Company LLC
(a/k/a Leadership Radio Network)**

MUR: 6089

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Shawn T. Flaherty. See 2 U.S.C. § 437g(a)(1).

II. INTRODUCTION

Complainant alleges that an interview of Federal candidate Melissa Hart on a radio talk show called "The Glen Meakem Program" that was broadcast on FM News Talk 104.7 (a/k/a WPGB), in Pittsburgh, Pennsylvania, was a coordinated communication that expressly advocated the election of Ms. Hart and solicited contributions to her campaign. Complainant further alleges that this activity violated the Federal Election Campaign Act of 1971, as amended (the "Act") because it resulted in the corporate producer of the Glen Meakem Program, the Leadership Radio Network (the "LRN"), making a prohibited corporate in-kind contribution to Melissa Hart and People with Hart, Inc., her principal campaign committee. Finally, Complainant asserts that the Leadership Radio Network cannot claim it is entitled to the "press exemption" because it paid for the airtime on FM News Talk 104.7 and thus was not acting as a press entity.

In a joint response ("Meakem Response") Glen Meakem and the Meakem Communications Company LLC ("MCC") (a/k/a Leadership Radio Network), deny that the interview with Ms. Hart was coordinated and explain that the costs to air the Program are paid by MCC, a partnership for purposes of the Act. According to the Meakem response, MCC contracts with Clear Channel Communications, the owner of the radio station, to air the Program twice a week. MCC pays the costs to air the Program. The Program is advertised on the radio "under

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the brand names of "The Glen Meakem Program" and "The Leadership Radio Network" but neither the Program nor LRN are independent legal entities. MCC asserts that it is not a corporation under the Act, but is a partnership under FEC regulations. MCC provided documentation showing that MCC is treated as a "disregarded entity" by the IRS, and that its sole member is SnowLine Partners, L.P., a Pennsylvania Limited Partnership, which, in turn, is owned, controlled and capitalized by the living trusts of Mr. Meakem and his wife, Diane Boone Meakem. Based on the above, MCC concludes that any contribution arising out of the interview would not constitute an impermissible corporate contribution. The response further asserts that even if the interview was coordinated, the *pro rata* value of the interview is *de minimis* and would not warrant further action by the Commission.

III. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Glen Meakem is the host of the radio show, The Glen Meakem Program, (the "Program") which airs on FM News Talk 104.7 ("the station") in Pittsburgh, Pennsylvania. The radio station is owned by Clear Channel Communications, Inc. ("CCC"). The station's daily programming features regular news reports and several talk shows, including the hour-long Program, which it airs twice a week, on Saturday and Sunday mornings.¹ The hour-long Program features a mix of interviews, commentary, and commercials. The agreement between MCC and CCC allows the Program to run promotional announcements and commercials.

On July 20, 2008, Glen Meakem interviewed Ms. Hart, a 2008 candidate for a seat in Pennsylvania's 4th Congressional District, on the Program. An audio file of the interview is

¹ The agreement between MCC and CCC provides for 57 minutes of airtime every Sunday for 52 weeks beginning March 16, 2008, at a cost of \$375 per program. The Program now airs twice a week, on Saturday and on Sunday mornings.

available on Glen Meakem's website at <http://glenmeakem.com/> (last accessed on April 13, 2009). The program was 57 minutes long and included a discussion of listener's emails, third party advertisements, an interview with an author, the interview with Melissa Hart, and a discussion of economic issues. Before the program aired, a disclaimer stated: "The following is a paid commercial announcement of the Leadership Radio Network."

The segment of the show with the interview of Hart lasted about 17 minutes. Meakem introduced Hart as a candidate and they discussed campaign issues. Toward the end of the interview (the last 2 minutes of the program), Meakem made statements expressly advocating the candidacy of Hart, encouraged listeners to contribute to her campaign, and asked Hart to indicate how people could support her campaign as follows:

I am a huge supporter of Melissa Hart . . . I have contributed to her campaign personally . . . My wife and I, we are really behind Melissa . . . We think it's great that she's running . . . Thank you for running . . . There's a lot of people in our listening area who can actually voted for Melissa 'cause they're in Pennsylvania's Fourth Congressional District, myself among them, so, Melissa was my Congressperson and, doggone it, I want her to be my Congressperson again. So I'm going to be pulling the lever for Melissa or pushing the button on the screen for Melissa this November. But also, you know what? In politics, regular people making contributions makes a difference. And, hey, if you feel strongly for Melissa, this is a person you should support. And if you want to support Melissa, how do people support you financially, how do they support your campaign?"

Hart replied by providing the campaign's website and mailing addresses:

Well, we have a website, it's w-w-w dot People with Hart - H - A - R - T - dot com. If you go there you can actually contribute on the website. And if you're not a website kind of guy or woman, we have our campaign committee, it's People with Hart, P.O. Box 435, Wexford, PA, 15090. Our phone number --"

Meakem continued:

I hope she wins in November. I hope you decide to reach out with your vote, time and energy, volunteering or with your money, or contributing. That will be a great thing to do for our community and our country. We need to have more conservatives back in congress. Melissa is a great candidate.

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Complainant alleges that the interview of Hart was a coordinated communication resulting in the making and receiving of in-kind contributions. *See* 11 C.F.R. § 109.21(a)(1)-(3). Complainant also asserts that the costs to broadcast the interview may have been paid for by a corporation, resulting in prohibited corporate contributions and the illegal corporate facilitation of federal contributions. *See* 2 U.S.C. § 441(b) and 11 C.F.R. § 114.2(f). Finally, Complainant asserts that the "press exemption" does not apply here because the radio station was paid to broadcast the Program, citing to Advisory Opinion 2004-30 (Citizens United) ("the very act of paying a broadcaster ... rather than receiving compensation from a broadcaster, is one of the 'considerations of form' that can help to distinguish [non-exempt spending] ... from exempted media activity.").

MCC denies the allegations of coordination and argue that even if there was coordination, the Commission should take no further action because the *pro rata* value of the "coordinated communication" is *de minimis*.² MCC also argues that any contribution arising out of the interview would not constitute an impermissible corporate contribution because it is a partnership for purposes of the Act. Because we conclude that the activity qualifies for the press exemption, we do not address the coordination allegations.

B. Analysis

The Act prohibits corporations from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for Federal office.

² MCC paid \$375 to air the 57 minute program, or \$6.60 per minute. The Hart interview comprised 17 minutes of the total program, for a value of \$112.20 in total. According to MCC, the portion of the interview that contained express advocacy and the dissemination of information regarding contributions lasted only about 2 minutes, for a value of \$13.31. However, there may be additional costs associated with the broadcast. The agreement between MCC and CCC references "\$475 per week NET investment" costs for "all items listed in the agreement including production, studio time, board operators." Thus, there may be additional productions costs associated with airing the Program.

2 U.S.C. § 441b(a). The Act defines “contribution” and “expenditure” to include any gift of money or “anything of value” made for the purpose of influencing any election for Federal office, but exclude any cost “incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer, or producer), ... unless the facility is owned or controlled by any political party, political committee, or candidate.” 2 U.S.C. § 431(8)(A)(i), (9)(A)(i), and (9)(B)(i); 11 C.F.R. §§ 100.52, 100.73, 100.111(a), and 100.132. This exclusion is known as the “press exemption.” or “media exemption.” The term “anything of value” includes in-kind contributions. 11 C.F.R. § 100.52(d)(1). Contributions and expenditures must be disclosed under the Act. 2 U.S.C. §§ 432 and 434.

Any party claiming the press exemption is subject to a two-part test. First, the Commission asks whether the entity engaging in the activity is a press entity within the meaning of the Act and the Commission’s regulations. *See* Advisory Opinion 2007-20 (XM Satellite Radio Inc.) at 3-4 and other advisory opinions cited therein. Second, the Commission, in determining the exemption’s scope, asks (a) whether the press entity is owned or controlled by a political party, committee, or candidate; and, if not, (b) whether the entity was functioning within the scope of a legitimate press entity at the time of the alleged violation. If the press entity is independent of any political party, committee, or candidate, and if it was acting as a legitimate press entity at the time of the alleged violation, it is exempt from the Act’s restrictions on corporate contributions and expenditures, and the Commission’s inquiry should end. *See Reader’s Digest Association v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981); *FEC v. Phillips Publishing*, 517 F. Supp. 1308, 1312-13 (D.D.C. 1981); Advisory Opinions 2005-19 (The Inside Track), 2005-16 (Fired Up!).

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In this matter, Complainant alleges that the radio interview of Hart does not qualify for the press exemption because it was a paid broadcast, and thus the costs of the interview are illegal in-kind corporate contributions to the Hart campaign because they contain express advocacy of Hart's election.³ Addressing the allegations, we first consider whether the radio station's broadcast of the Program qualifies for the press exemption. We conclude that the radio station is a press entity but that it is not acting as a press entity when it airs the Program because another entity pays for the airtime and maintains control over the content of the show. The second question is whether MCC, the entity that pays for the airtime, itself is a press entity and whether it was acting in its legitimate press function when it aired the Program containing the interview of Hart. We conclude that it does and that the press exemption applies. Thus, any costs incurred in the production and broadcast of the Program at issue are not contributions or expenditures under the Act.

In this case, the Program is broadcast on FM News 104.7 (a/k/a WPGB). The radio station itself is a press entity because it is in the business of producing on a regular basis news stories and talk shows. In addition, Complainant does not allege nor does the available evidence show that either the broadcast facility or its owner, CCC, is "owned or controlled by any political party, political committee, or candidate." *See* 11 C.F.R. § 100.7(b)(2). However, the station is not acting as a press entity when it airs the Program. Because MCC pays for the air time and Meakem maintains control over the show's content, the station itself is necessarily not acting as a media entity exercising its "unfettered right ...to cover and comment on political campaigns." Advisory Opinion 1982-44 (DNC and RNC), citing H.R. Report No. 93-1239, 93d Congress, 2d

³ Based on the available information, MCC, the entity that paid for the airtime, appears to be a partnership rather than a corporation for purposes of the Act. *See* 11 C.F.R. § 110.1(g). Therefore, any contribution from the MCC to the Hart campaign is permissible as long as it is within applicable contribution limits. *See* 11 C.F.R. § 110.1(e).

Sess. 4 (1974); *see also* MUR 5297 (Wolfe) (the station was not acting as a press entity but as an entrepreneur, when it aired a show hosted by Wolfe because Wolfe paid for the airtime and maintained complete control over the content of the show).

Next, we turn to the question of whether MCC qualifies as a press entity. In determining whether an entity is a press entity, the Commission has focused on whether it is in the business of producing on a regular basis a program that disseminates news stories, commentary, and/or editorials. *See* Advisory Opinion 2007-20 (XM Satellite Radio Inc.) and 2005-19 (The Inside Track). In its IRS filing for an employer ID number, MCC listed "broadcast production" as the principal activity of the business and "creation of talk radio programming" under products produced or services provided. *See* Meakem Response, Exhibit 2 (IRS Form SS-4 for MCC). The Program is a regular radio show hosted by Mr. Meakem which features interviews, commentary and/or editorials. The Program's archives (available on the Program's website) list programs on a wide range of topics, including the economy, politics, history, energy, education, and the environment. Thus, based on the above, MCC would appear to qualify as a press entity.

Another question in the press exemption analysis is whether the press entity is owned or controlled by a political party, political committee, or candidate. Neither the MCC nor the Program appears to be owned or controlled by a political party, political committee, or candidate. In addition, Meakem was not a candidate for Federal office and we have no information suggesting that he is an officer or employee of any political party or political committee.

The final question is whether the press entity is acting as a press entity in conducting the activity at issue. Similarly, on-air interviews of candidates also fall within the bounds of the press exemption, and therefore, the interview of Hart is a legitimate press function of a media entity. *See* Advisory Opinion 1987-08 at 5-6 (U.S. News) (candidate interviews covered by

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news story exemption). Even if the Program expressly advocated the candidate's election and solicited contributions to her campaign, this lack of objectivity does not disqualify it from the press exemption. See Advisory Opinions 2007-20 (XM Satellite Radio Inc.), 2005-19 (The Inside Track) and 2005-16 (Fired Up). Finally, the fact that an entity buys airtime to broadcast a program does not necessarily preclude it from qualifying for the press exemption, notwithstanding Complainant's reference to Advisory Opinion 2004-30 (Citizens United) ("the very act of paying a broadcaster ... rather than receiving compensation from a broadcaster, is one of the 'considerations of form' that can help to distinguish [non-exempt spending] ... from exempted media activity" in support of its assertion. In A.O. 2004-30, the Commission's conclusion that the press exemption would not be available to Citizens United was not based on the fact that Citizens United would be paying for the broadcast, but because it did not "regularly produce documentaries or pay to broadcast them." Moreover, the Commission has found that the press exemption would apply even where an entity paid a broadcaster to air the program. In Advisory Opinion 2005-19 (The Inside Track), the Commission concluded that an entity's production and purchase of airtime to broadcast a radio talk show would fall within the press exemption, noting that the entity "is in the business of producing on a regular basis a radio program that disseminates news stories, commentary and/or editorials" and that it "also buys airtime to broadcast the program and resells some of that airtime for third party advertisements." Like in Advisory Opinion 2005-19, MCC is in the business of producing a radio show, which runs on a regular basis and also includes third party advertisements. Thus, based on the above, it appears that MCC was acting as a press entity when it aired the interview with Hart.

The press exemption, where applicable, also encompasses what otherwise would be deemed "coordinated communication" between a candidate or committee and a *bona fide*

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corporate media entity, which might lead to violations of section 441b. *See* 11 C.F.R.

§109.21(b); 11 C.F.R. §§ 100.73 and 100.132. Because the press exemption applies to the activity in this case, any alleged coordinated communications would not violate the Act.

Therefore, there is no reason to believe that Meakem Communications Company LLC (a/k/a Leadership Radio Network) violated the Act or the Commission's regulations in connection with MUR 6089.

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